IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2007

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1043 of 2007

The Commissioner of Income-tax,
Tiruchirapalli. .. Appellant

Vs.

M.Ravindran .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D', Chennai in I.T.A. No.1584/Mds/2005 dated 15.02.2007 for the assessment year 2000-2001 against the order dated 30.03.2005 of the Commissioner of Income Tax (Appeals) III, Chennai - 34 in ITA.No.165/2003-04/A.III against the order dated 28.03.2003 in PAN.No.ADJPR9162J of the Assistant Commissioner of Income Tax, Company Circle (I) Tiruchirapalli I/C, Chennai - 34, against the Commissioner of Income Tax (Appeals) III, Chennai - 34, in ITA.No.165/2003-04/A III dated 30.03.2005 for the assessment year 2000-2001.

For Appellant : Mr.N.Muralikumaran,
Sr.Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D', Chennai in I.T.A. No.1584/Mds/2005 dated 15.02.2007, raising the following substantial question of law:-

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"Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in holding that the addition of Rs.10.00 lakhs being the unexplained credit is not leviable?"

2. The facts leading to the above substantial question of law are as under:-

The assessee is a person of Indian Origin and is a citizen of Sri Lanka. The relevant assessment year is 2000-2001 and the corresponding accounting year ended on 31.03.2000. The assessee filed his Return of income on 01.03.2001 admitting a total income of Rs.60,000/- in the status of Non-Resident. The Return was processed under Section 143(1) of the Income-tax Act ("Act" in short) on 24.09.2001 and notice under Section 143 (2) of the Act was issued on the same day, and was served on the assessee on 09.10.2001. The assessment was completed under Section 143(3) of the Act determining the total income at Rs.12,60,000/-. While completing the assessment, the Assessing Officer made additions amounting to Rs.12,00,000/- under the head "unexplained credit" on the ground that the said sum was not satisfactorily explained. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals) ("CIT (A)" in short). The CIT(A) deleted the addition of Rs.10,00,000/- made by the Assessing Officer by relying on the circular of Central Board of Direct Taxes ("CBDT" in short), which is applicable to the assessee, and confirmed the addition of Rs.2,00,000/- and partly allowed the appeal. Aggrieved by the deletion of Rs.10,00,000/- made by the CIT(A), the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of the CIT(A). Hence the present tax case by the Revenue.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that the assessee had not satisfactorily explained the source of his income and also the assessee was not a migrant to whom the said CBDT Circular applies. Hence the addition made by the Assessing Officer is justified.

4. Heard the counsel. The assessee is a citizen of Sri Lanka and a person of Indian Origin and assessed in India as a Non-Resident. The assessee sold his properties vide documents dated 7.4.1998 and 25.3.1999 for a consideration of SLR 34 lakhs and SLR 85 lakhs respectively. In support of this claim, the assessee has produced documents before the Assessing Officer and also relied on the CBDT Circular No.1527 dated 12.09.1983. In Page-4 of the assessment order, the said CBDT Circular is extracted, which reads as under:-

"2.15 It has been represented to the Board that in view of the difficulties being faced by the persons migrating from Sri Lanka to India due to recent disturbances in that country, it may not be possible for a migrant from that country to lead the evidence

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necessary to prove his / her claim that a particular sum of money or personal jewellery etc., has been brought over by him / her from that country.

2.16 In order to avoid inconvenience to persons of Indian origin migrating from Sri Lanka, in their Income tax assessment in India, the Board consider that the case of bona-fide migrants from that country should be dealt with in a sympathetic manner. In their cases, production of direct or documentary evidence in the shape of transfer through banks, hundles etc., in support of remittance from that country need not be insisted upon.

2.17 However with a view to ensure that inscrupulous persons do not abuse the concession, the Income tax officers should ensure the satisfaction of the following conditions before accepting a claim of remittance from the above mentioned country:-

1. The assessee has migrated to India from Sri Lanka on or after 1.4.1983.
2. The assessee had sufficient resources in Sri Lanka to which the remittance could be reasonably attributed.
3. The assessee had no source of income either in India or any foreign country other than Sri Lanka, prior to migration and he was not assessed as resident in India either for the assessment preceding the year in which he migrated or for earlier years.
4. The assessee has intimated the Income Tax officer concerned about the sum brought over and the date(s) of its introduction in the books of account within two months of the date of his arrival in India and in the case of persons who have already migrated by 30th November 1983.
5. The above concession will be subject to an overall ceiling of Rs.2 Lakhs in respect of all sums brought over from Sri Lanka and introduced in the account books by the assessee and all members of his family taken together."

The scope of the above Circular has been considered by the first appellate authority as well as the Tribunal and they have come to the conclusion that the assessee has sufficient sources in Sri Lanka. The Tribunal, in Paragraph-3 of its order, held as follows:-

"We have heard the rival submissions and perused the material on record. It is an admitted fact that the Assessee has produced documents relating to sale of property. From this it is evident that the Assessee has got a consideration of SLR 35 lakhs and SLR 85 lakhs for the two properties stated in the sale deed. The Assessing Officer is not ready to accept this evidence though it was produced before him. There is no allegation that the documents were not produced before him. According to the Assessing Officer, the evidence is insufficient. But the CBDT

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Circular is very clear that if the Assessee produces adequate evidence to the Assessing Officer that he had sufficient sources in Sri Lanka to cover the remittance to India, the claim should be admitted. In our opinion, the condition laid down in the circular (supra) is fulfilled by the Assessee, like the Assessee has migrated from Sri Lanka and he has sufficient resources in Sri Lanka and he has also produced evidence regarding the source. Therefore, we hold that the CIT(Appeals) has taken a correct view in deleting the addition. We also do no find that any useful purpose will be served in setting aside the matter to the file of the Assessing Officer for fresh consideration. Accordingly, we uphold the order of the CIT(Appeals) and reject the ground taken by the Revenue."

From a reading of the above, it is clear that the Tribunal had given a factual finding that the assessee had sufficient sources in Sri Lanka to cover the remittances to India. The finding that the assessee has enough source, is a question of fact. The order of the Tribunal is not perverse and the concurrent finding given by both the authorities below is based on valid materials and evidence. In the case of Commissioner of Income-tax Vs. P.Mohanakala [2007] 291 ITR 278 (SC), the Supreme Court held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench 'D',
   Sastri Bhavan, Chennai.34

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2. The Commissioner of Income-tax (Appeals) III,
   Chennai-600 034.

3. The Assistant Commissioner of Income-tax,
   Central Circle III(I)(I/c), Chennai-34.

1 cc To Mr.N.Muralikumaran, Advocate, SR.425411.

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